



**THE CITY OF NEW YORK
LAW DEPARTMENT**

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June 23, 2022

VIA ECF

Hon. Gabriel W. Gorenstein
United States Magistrate Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

MEMORANDUM ENDORSED

Re: El Bey v. Crocillo, et al.,
20 Civ. 524 (LTS) (GWG)

Your Honor:

I am the attorney assigned to represent defendant the City of New York (the “City”) in the above-referenced matter. The City writes to: (a) request that the Court confirm that the Third Amended Complaint (“TAC”) (ECF No. 63) remains the operative complaint in the instant matter; and (b) respectfully request a two-week extension of its time to file a motion.

By way of background, on February 22, 2022, Your Honor directed plaintiff to file a third amended complaint that comports with Rule 8 and Rule 10 of the Federal Rules of Civil Procedure. (See ECF No. 58). Your Honor reasoned that, while the Court could permit the defendants to move to dismiss the complaint . . . , the Court believes it would be better to ask plaintiff at a conference if she would like the opportunity to file a third amended complaint that would comply with [the Federal Rules].” (See *id.*). Thereafter, on March 24, 2022, the parties convened for a status conference with Your Honor. (See ECF No. 62). At the conference, plaintiff, *inter alia*, indicated her intention to file a third amended complaint. (See *id.*). Accordingly, the Court instructed plaintiff to file her third amended complaint on or before April 14, 2022. (See *id.*).

On April 20, 2022, plaintiff filed the TAC. (ECF No. 63). On April 22, 2022, the Court issued an Order acknowledging that “changes are still needed to conform the complaint to the requirements of the Federal Rules of Civil Procedure,” explaining the necessary additional changes to plaintiff, and further instructing plaintiff to file a fourth amended complaint on or before May 13, 2022. (See ECF No. 64). On June 2, 2022, the Court extended plaintiff’s deadline to file a fourth amended complaint to June 16, 2022, and instructed that “[i]f plaintiff does not file a Fourth Amended Complaint in conformity with the May 23 Order, defendants shall respond to the [TAC] by June 30, 2022.” (See ECF No. 72).

On June 21, 2022, plaintiff filed a letter “re: RE-AMENDED COMPLAINT” (hereinafter, “Plaintiff’s June 21st Letter”). (See ECF No. 73). Therein, plaintiff acknowledges the Court’s April 22 Order, and claims that she “did file the fourth amended complaint as the Judge stated.” (*Id.*). Plaintiff’s submission also annexes a “brief” that, but for certain formatting changes, appears to include identical allegations as the TAC. (See *id.*). Complicating matters further, plaintiff’s submission also states “if you Judge refused to accept my third-amended complained to bad (sic).” (*Id.*).

On June 22, 2022, the undersigned conferred via telephone with the other attorneys of record, regarding Plaintiff’s June 21st Letter. The undersigned believes that Plaintiff’s June 21st Letter cannot reasonably be construed as her fourth amended complaint and that, at present, the TAC remains the operative pleading. Consequently, the City intends to make a motion as to the TAC, in accordance with the Court’s June 2 Order (ECF No. 72). However, counsel for MTA and counsel for Crocilla, Michels, Vallas, and Coza believe that Plaintiff’s June 21st Letter represents plaintiff’s fourth amended complaint. For the foregoing reasons, and to ensure that its forthcoming motion is responsive to the appropriate filing, the City is respectfully requesting that the Court confirm that the TAC remains the operative complaint in this matter. In light of the aforementioned confusion, the City is further respectfully requesting that the Court enlarge its deadline to file its forthcoming motion by two weeks, to July 14, 2022. The individual MTA Defendants and MTA join in this request.

The City of New York thanks the Court for its time and attention to this matter.

Respectfully submitted,

Andrew B. Spears /s/
Andrew B. Spears
Assistant Corporation Counsel
Special Federal Litigation Division

cc: All parties (via ECF)

While the letter from plaintiff docketed as # 73 does not comply with Court’s directives, it appears intended by plaintiff to constitute an amended complaint. Accordingly, the Court hereby deems Docket # 73 to constitute Plaintiff’s Fourth Amended Complaint. Defendants shall respond to the Fourth Amended Complaint by July 14, 2022. If they wish to make a motion, they shall do so in accordance with Judge Swain’s Individual Practices. Counsel for defendants are requested to email a copy of this Order to plaintiff.

So Ordered.

Gabriel W. Gorenstein
GABRIEL W. GORENSTEIN
United States Magistrate Judge

June 24, 2022